



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 1
5 POST OFFICE SQUARE, SUITE 100
BOSTON, MA 02109-3912

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MAY 10 2011

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May 10, 2011

Via Hand Delivery

Wanda I. Santiago
Regional Hearing Clerk
U.S. EPA, Region 1
5 Post Office Square – Suite 100
Mail Code: ORA18-1
Boston, MA 02109-3912

RE: In the Matter of: Colin Wentworth
Docket No. TSCA-01-2011-0037

Dear Ms. Santiago:

I enclose for filing in the above-referenced matter the original and one copy of the Complaint and a Certificate of Service.

Thank you for your assistance.

Sincerely,

William D. Chin
Enforcement Counsel
U.S. EPA, Region 1

Enclosures

cc: Colin Wentworth

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1

RECEIVED

MAY 10 2011

EPA ORC WS
Office of Regional Hearing Clerk

In the Matter of:)
)
Colin Wentworth)
6 Lake Avenue)
Rockland, Maine 04841)
)
Respondent.)
)
Proceeding under Section 16(a) of the)
Toxic Substances Control Act,)
42 U.S.C. § 2615(a).)
_____)

Docket No.
TSCA-01-2011-0037

COMPLAINT AND
NOTICE OF
OPPORTUNITY FOR
HEARING

COMPLAINT

I. STATUTORY AND REGULATORY BACKGROUND

1. This Administrative Complaint and Notice of Opportunity for Hearing (“Complaint”) is issued pursuant to Section 16(a) of the Toxic Substances Control Act (“TSCA”), 15 U.S.C. § 2615(a), 40 C.F.R. § 745.118, and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (“Consolidated Rules of Practice”), 40 C.F.R. Part 22. Complainant is the Legal Enforcement Manager of the Office of Environmental Stewardship, U.S. Environmental Protection Agency (“EPA”), Region 1. Respondent, Colin Wentworth, is hereby notified of Complainant’s determination that Respondent has violated Sections 15 and 409 of TSCA, 15 U.S.C. § 2689, the Residential Lead-Based Paint Hazard Reduction Act of 1992 (“the Act”), 42 U.S.C. § 4851 *et seq.*, and the federal regulations promulgated thereunder, entitled “Residential Property Renovation,” as set forth at 40 C.F.R. Part 745, Subpart E. Complainant seeks civil penalties pursuant to Section 16 of

TSCA, 15 U.S.C. § 2615, which provides that violations of Section 409 of TSCA are subject to the assessment by Complainant of civil and/or criminal penalties.

2. In 1992, Congress passed the Act in response to findings that low-level lead poisoning is widespread among American children, that pre-1980 American housing stock contains more than three million tons of lead in the form of lead-based paint, and that the ingestion of lead from deteriorated or abraded lead-based paint is the most common cause of lead poisoning in children. One of the stated purposes of the Act is to ensure that the existence of lead-based paint hazards is taken into account during the renovation of homes and apartments. To carry out this purpose, the Act added a new title to TSCA entitled “Title IV-Lead Exposure Reduction,” which currently includes Sections 401-411 of TSCA, 15 U.S.C. §§ 2681-2692.

3. In 1996, EPA promulgated regulations to implement Section 402(a) of TSCA, 15 U.S.C. § 2682(a). These regulations are set forth at 40 C.F.R. Part 745, Subpart L. In 1998, EPA promulgated regulations to implement Section 406(b) of the Act. These regulations are set forth at 40 C.F.R. Part 745, Subpart E. In 2008, EPA promulgated regulations to implement Section 402(c)(3) of TSCA, 15 U.S.C. § 2682(c)(3) by amending 40 C.F.R. Part 745, Subparts E and L (the “Renovation, Repair and Painting Rule” or the “RRP Rule”).

4. Pursuant to Section 401(17) of TSCA, 15 U.S.C. § 2681(17), and 40 C.F.R. § 745.103, the housing stock addressed by the Act is termed “target housing.” “Target housing” is defined as any housing constructed prior to 1978, except housing for the elderly or disabled (unless any child who is less than six years old resides or is expected to reside in such housing), or any 0-bedroom dwelling.

5. With regard to residential property renovations, the RRP Rule sets forth procedures and requirements for, among other things, the accreditation of training programs, the certification of renovation firms and individual renovators, the work practice standards for renovation, repair and painting activities in target housing, and the establishment and maintenance of records.

6. Pursuant to Section 409 of TSCA, it is unlawful for any person to fail to comply with any rule issued under Subchapter IV of TSCA (such as the RRP Rule). Pursuant to 40 C.F.R. § 745.87(a), the failure to comply with a requirement of the RRP Rule is a violation of Section 409 of TSCA. Pursuant to 40 C.F.R. § 745.87(b), the failure to establish and maintain the records required by the RRP Rule is a violation of Sections 15 and 409 of TSCA, 15 U.S.C. §§ 2614 and 2689.

7. Section 16(a)(1) of TSCA, 15 U.S.C. § 2615(a)(1), provides that any person who violates a provision of Section 15 or 409 of TSCA shall be liable to the United States for a civil penalty.

8. Section 16(a) of TSCA and 40 C.F.R. § 745.87(d) authorize the assessment of a civil penalty of up to \$25,000 per day per violation of the RRP Rule. Pursuant to the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and 40 C.F.R. Part 19, violations that occurred after March 15, 2004 through January 12, 2009, are subject to penalties up to \$32,000 per day per violation. Violations that occur on or after January 13, 2009, are subject to penalties up to \$37,500 per day per violation. See 73 Fed. Reg. 75340 (December 11, 2008).

II. GENERAL ALLEGATIONS

9. Respondent is an individual residing at 6 Lake Avenue, Rockland, Maine. Respondent owns and manages several residential properties in Rockland, Maine, including a building located at 83-87 Park Street (the "Facility"). Constructed in 1852, the Facility is a residential building with four separate units for rent, each with a different street address (i.e., 83, 85, 87A, and 87B Park Street).

10. At all times relevant to this Complaint, the Facility is "target housing," as defined in 40 C.F.R. § 745.224. Furthermore, the Facility does not satisfy the requirements for an exemption to the provisions of TSCA or the RRP Rule.

11. Respondent successfully completed an accredited course regarding the RRP Rule in February 2010 and, at all times relevant to this Complaint, is and has been a "certified renovator," as that term is described in 40 C.F.R. § 745.90.

12. At all times relevant to this Complaint, Michael Ugro was employed by Respondent to perform maintenance at Respondent's properties, including the Facility. At all times relevant to this Complaint, Mr. Ugro was not a "certified renovator," as that term is described in 40 C.F.R. § 745.90.

13. At some time during the first week of October 2010, Mr. Ugro, assisted by Respondent's brother, Derek Wentworth, began a repainting project at the Facility. The project involved the sanding, scraping and general removal of paint on one exterior wall of the Facility.

14. At all times relevant to this Complaint, the repainting project at the Facility was a "renovation," as defined in 40 C.F.R. § 745.83.

15. At all times relevant to this Complaint, the repainting project at the Facility was a “renovation for compensation” subject to the RRP Rule. See 40 C.F.R. § 745.82. Furthermore, the repainting project at the Facility did not satisfy the requirements for an exemption to the provisions of TSCA or the RRP Rule.

16. At all times relevant to this Complaint, Respondent is and was a “firm,” as defined in 40 C.F.R. § 745.83.

17. On October 12, 2010, EPA Region 1 received an email complaint regarding the repainting project at the Facility. The email contained a link to a “YouTube” video, which was recorded on October 11, 2010, that showed two workers (later identified by Respondent as Mr. Ugro and Derek Wentworth) performing the repainting project at the Facility (the “Video”). The Video showed two workers who were using power tools without any high efficiency particulate (“HEPA”) exhaust controls to grind/remove paint from the lowest portion of an exterior wall at the Facility. In the Video, almost all of the paint from this exterior wall at the Facility had been removed. The Video showed no warning signs posted in the work area. Furthermore, the Video showed that the workers were not using any means of containment for the dust and debris generated by the grinding/paint removal activities and that they had not covered the ground in the work area with any plastic sheeting or other disposable impermeable material to collect falling paint debris.

18. On October 12, 2010, EPA Region 1 staff notified the Maine Department of Environmental Protection (“ME DEP”) of the email complaint regarding the repainting project at the Facility. (ME DEP had also received an email complaint about the repainting project at the Facility from the same complainant on October 12, 2010.) On

that day, a ME DEP inspector conducted an initial compliance inspection of the Facility (the “ME DEP Inspection”). At the time of the ME DEP Inspection, Respondent informed the ME DEP inspector that the workers had removed paint from the exterior wall at the Facility using a grinder that was not equipped with a HEPA exhaust control system. ME DEP also noted that the workers had not received any training on the RRP Rule and were not using any tarps during the repainting project at the Facility. At the time of the ME DEP Inspection, paint chips were strewn on the ground underneath the area where the grinding/paint removal activities had taken place and on the driveway on the west side of the Facility. The ME DEP inspector performed field screening tests on the paint debris on the ground. The field screening sample results showed that the paint debris tested positive for lead.¹ As a result, the ME DEP inspector immediately ordered the workers to stop the repainting project at the Facility until the site had been properly cleaned.

19. On October 13, 2010, a ME DEP inspector returned to the Facility for a follow-up inspection. At that time, the ME DEP inspector noted that all visible paint debris had been removed from the exterior perimeter of the Facility and authorized completion of the work.

20. On November 4, 2010, EPA Region 1 inspectors conducted a compliance inspection at the offices of Respondent’s attorney in Rockland, Maine in order to determine Respondent’s compliance with TSCA, more specifically, the Renovation of Target Housing Rule (the “Pre-Renovation Rule”), the Real Estate Notification and

¹ On October 12, 2010, inspectors from the U.S. Department of Labor, Occupational Safety and Health Administration (“OSHA”), also performed an inspection of the Facility and collected samples of the paint debris from the exterior wall of the Facility for testing. OSHA’s sampling report revealed that the paint had a lead concentration of 5.017%.

Disclosure Rule (the “Disclosure Rule”), and the RRP Rule, as set forth in 40 C.F.R. Part 745 (the “EPA Inspection”).

21. At the time of the EPA Inspection, Respondent stated that the repainting project at the Facility was included on a list of projects for his properties that Respondent had given to Mr. Ugro to complete by the end of the Fall of 2010. Respondent stated that Mr. Ugro apparently began the repainting project at the Facility sometime after Respondent had left for vacation at the end of September. Respondent further noted that he was inaccessible by cell phone to Mr. Ugro during his vacation. Respondent also stated that he had not given Mr. Ugro any training or instruction regarding the work practice standards for renovations required by the RRP Rule. Respondent further stated that his brother, Derek Wentworth, had not been trained in lead-safe work practices.

22. On November 29, 2010, EPA Region 1 issued individual TSCA subpoenas to Respondent and to Mr. Ugro requesting further information regarding the repainting project at the Facility.

23. On November 29, 2010, ME DEP issued a “Notice of Violation” (“ME DEP NOV”) to Respondent notifying Respondent that he had violated Maine’s lead law by failing to take reasonable precautions to prevent the release of lead to the environment during the repainting project at the Facility.

24. On December 20, 2010, Region 1 received responses to the TSCA subpoenas from Respondent and Mr. Ugro (“Respondent’s Response” and the “Ugro Response”, respectively).

25. As a result of the EPA Inspection, the ME DEP Inspection, Respondent’s Response, the Ugro Response, and additional information provided by Respondent and

other sources, Region 1 has identified the following violations of Section 409 of TSCA, Residential Lead-Based Paint Hazard Reduction Act of 1992, and the RRP Rule, as set forth at 40 C.F.R. Part 745, Subpart E.

III. VIOLATIONS

Count 1 - Failure to Obtain Initial Firm Certification

26. Complainant incorporates by reference Paragraphs 1 through 25.

27. Pursuant to 40 C.F.R. § 745.81(a)(2)(ii), on or after April 22, 2010, no firm may perform, offer to perform, or claim to perform renovations without certification from EPA under 40 C.F.R. § 745.89 unless the renovation qualifies for one of the exceptions identified in 40 C.F.R. §§ 745.82(a) or (c).

28. Pursuant to 40 C.F.R. § 745.89(a)(1), firms that perform renovations for compensation must apply to EPA for certification to perform renovations. To apply, a firm must submit to EPA a completed "Application for Firms," signed by an authorized agent of the firm, and pay the required fee. Pursuant to 40 C.F.R. § 745.89(a)(2), if EPA approves a firm's application, EPA will issue a certificate to the firm that allows the firm to perform renovations for compensation.

29. Due to concerns raised by the regulated community regarding difficulties experienced in obtaining the required firm certification, however, on June 18, 2010, EPA issued a memorandum stating that, in order to allow for sufficient time for renovation firms to obtain the necessary certification, EPA would not take any enforcement action for violations of the RRP Rule's firm certification requirement until October 1, 2010 (the

“Giles Memorandum”).²

30. As described above in Paragraph 15, at all times relevant to this Complaint, the repainting project at the Facility was a “renovation for compensation” subject to the RRP Rule. Furthermore, the repainting project at the Facility does not satisfy the requirements for one of the exemptions identified in 40 C.F.R. §§ 745.82(a) or (c).

31. In Respondent’s Response, Respondent identified himself as the “firm” that was responsible for the repainting project at the Facility.

32. In the Ugro’s Response, Mr. Ugro also identified Respondent as the “firm” that was responsible for the repainting project at the Facility.

33. Accordingly, pursuant to 40 C.F.R. § 745.81(a)(2)(ii) and the Giles Memorandum, Respondent was required to have firm certification from EPA to perform renovations under 40 C.F.R. § 745.89 by no later than September 30, 2010, in order to perform the repainting project at the Facility. Although Respondent, himself, is a certified renovator pursuant to 40 C.F.R. § 745.90, as described above in Paragraph 11, the RRP Rule also requires that Respondent be certified as a “firm”. See 40 C.F.R. § 745.90(a).

34. At the time of the Inspection, Respondent had not yet submitted an application to EPA for firm certification to perform renovations under 40 C.F.R. § 745.89 or obtained such certification.

35. Accordingly, Respondent’s failure to have firm certification to perform renovations under 40 C.F.R. § 745.89 for the repainting project at the Facility by

² See June 18, 2010 Memorandum from Cynthia Giles, Assistant Administrator, Office of Enforcement and Compliance Assurance, “Further Implementation Guidance for the Renovation, Repair and Painting Rule”. This memorandum, however, also stated that EPA would continue to enforce the work practice requirements in the RRP Rule as of the rule’s effective date.

September 30, 2010, constitutes a violation of 40 C.F.R § 745.81(a)(2)(ii), and Section 409 of TSCA.

Count 2 - Failure to Post Warning Signs

36. Complainant incorporates by reference Paragraphs 1 through 35.

37. Pursuant to 40 C.F.R. § 745.89(d)(3), firms performing renovations must ensure that all renovations performed by the firm are performed in accordance with the work practice standards in 40 C.F.R. § 745.85. Pursuant to 40 C.F.R. § 745.85(a)(1), firms must post signs clearly defining the work area and warning occupants and other persons not involved in the renovation activities to remain outside of the work area.

These signs must be posted before beginning the renovation and must remain in place and be readable until both the renovation and the post-renovation cleaning verification have been completed.

38. The Video described above in Paragraph 17, showed that on October 11, 2010, there were no signs posted in the work area of the repainting project at the Facility clearly defining the work area and warning occupants and other persons not involved in the renovation activities to remain outside the area.

39. At the time of the EPA Inspection, when asked if such warning signs had been properly placed and maintained during the repainting project at the Facility, Respondent replied, "No."

40. Accordingly, Respondent's failure to post and maintain signs in the work area of the repainting project at the Facility clearly defining the work area and warning occupants and other persons not involved in the renovation activities to remain outside of

the work area constitutes a violation of 40 C.F.R. §§ 745.89(d)(3) and 745.85(a)(1) and Section 409 of TSCA.

Count 3 - Failure to Cover Ground with Plastic Sheeting

41. Complainant incorporates by reference Paragraphs 1 through 40.

42. Pursuant to 40 C.F.R. § 745.89(d)(3), firms performing renovations must ensure that all renovations performed by the firm are performed in accordance with the work practice standards in 40 C.F.R. § 745.85. Pursuant to 40 C.F.R. § 745.85(a)(2)(ii)(C), for exterior renovations, firms must cover the ground with plastic sheeting or other disposable impermeable material extending 10 feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to collect falling paint debris, whichever is greater.

43. The Video described above in Paragraph 17, showed that on October 11, 2010, there was no plastic sheeting or other impermeable material covering the ground in the work area of the repainting project at the Facility to collect falling paint debris.

44. As described above in Paragraph 18, at the time of the ME DEP Inspection, the workers were not using any tarps during the repainting project at the Facility, and paint chips were strewn on the ground underneath the area where the grinding/paint removal activities had taken place and on the driveway on the west side of the Facility.

45. At the time of the EPA Inspection, when asked if plastic tarp for containment was available for the repainting project at the Facility, Respondent replied, "No."

46. Accordingly, Respondent's failure to cover the ground with plastic sheeting or other disposable impermeable material extending 10 feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to collect falling paint debris,

whichever is greater, for the repainting project at the Facility constitutes a violation of 40 C.F.R. §§ 745.89(d)(3) and 745.85(a)(2)(ii)(C) and Section 409 of TSCA.

Count 4 – Use of Sanding/Grinding Equipment without HEPA Exhaust Control

47. Complainant incorporates by reference Paragraphs 1 through 46.

48. Pursuant to 40 C.F.R. § 745.89(d)(3), firms performing renovations must ensure that all renovations performed by the firm are performed in accordance with the work practice standards in 40 C.F.R. § 745.85. Pursuant to 40 C.F.R. § 745.85(a)(3)(ii), during renovations, the use of machines that remove lead-based paint through high speed operation such as sanding, grinding, power blasting, needle gun, abrasive blasting, or sandblasting is prohibited unless such machines are used with HEPA exhaust control.

49. The Video described above in Paragraph 17, showed that on October 11, 2010, workers were using power equipment without any HEPA exhaust controls to sand/scrape paint from the lowest portion of an exterior wall at the Facility.

50. As described above in Paragraph 18, at the time of the ME DEP Inspection, Respondent informed ME DEP that the workers had removed paint from the exterior wall at the Facility using a grinder that was not equipped with a HEPA exhaust control system.

51. At the time of the EPA Inspection, when asked if the power equipment used for the repainting project at the Facility was equipped with a shroud and connected to a HEPA vacuum system (i.e., HEPA exhaust control), Respondent replied, “No.”

52. Accordingly, Respondent’s failure to use machines that remove lead-based paint through high speed operation such as sanding, grinding, power blasting, needle gun, abrasive blasting, or sandblasting with HEPA exhaust control for the repainting project at

the Facility constitutes a violation of 40 C.F.R. §§ 745.89(d)(3) and 745.85(a)(3)(ii) and Section 409 of TSCA.

Count 5 – Failure to Contain Waste from Renovation Activities

53. Complainant incorporates by reference Paragraphs 1 through 52.

54. Pursuant to 40 C.F.R. § 745.89(d)(3), firms performing renovations must ensure that all renovations performed by the firm are performed in accordance with the work practice standards in 40 C.F.R. § 745.85. Pursuant to 40 C.F.R. § 745.85(a)(4)(i), waste from renovation activities must be contained to prevent releases of dust and debris before the waste is removed from the work area for storage or disposal.

55. The Video described above in Paragraph 17, showed that on October 11, 2010, the workers were not using any means of containment for the dust and debris generated by the grinding/paint removal activities for the repainting project at the Facility.

56. As described above in Paragraph 18, at the time of the ME DEP Inspection, ME DEP noted that the workers were not using any tarps during the repainting project at the Facility and that paint chips were strewn on the ground underneath the area where the grinding/paint removal activities had taken place and on the driveway on the west side of the Facility.

57. At the time of the EPA Inspection, when asked if impermeable containment was placed and fastened to collect lead paint wastes for the repainting project at the Facility, Respondent replied, “No.”

58. As described above in Paragraph 45, at the time of the EPA Inspection, when asked if plastic tarp for containment was available for the repainting project at the Facility, Respondent replied, "No."

59. Accordingly, Respondent's failure to contain the waste from the repainting project at the Facility to prevent releases of dust and debris before the waste was removed from the work area for storage or disposal constitutes a violation of 40 C.F.R. §§ 745.89(d)(3) and 745.85(a)(4)(i) and Section 409 of TSCA.

Count 6 – Failure to Establish and Maintain Records

60. Complainant incorporates by reference Paragraphs 1 through 59.

61. Pursuant to 40 C.F.R. § 745.86(a), firms performing renovations must retain all records necessary to demonstrate compliance with 40 C.F.R. Part 745, Subpart E for a period of three years following completion of the renovation. Pursuant to 40 C.F.R. § 745.86(b)(7), records that must be retained by firms include documentation of compliance with the work practice standards of 40 C.F.R. § 745.85. Pursuant to 40 C.F.R. § 745.87(b), the failure to establish and maintain records required by 40 C.F.R. Part 745, Subpart E is a violation of Sections 15 and 409 of TSCA.

62. At the time of the EPA Inspection, Respondent could not recall having any records regarding the repainting project at the Facility that documented compliance with the work practice standards of 40 C.F.R. § 745.85. To date, Respondent has not produced any records regarding the repainting project at the Facility that documented compliance with the work practice standards of 40 C.F.R. § 745.85.

63. Accordingly, Respondent's failure to have any records regarding the repainting project at the Facility that documented compliance with the work practice

standards of 40 C.F.R. § 745.85, constitutes a violation of 40 C.F.R. §§ 745.86(a) and (b)(7) and 745.87(b) and Sections 15 and 409 of TSCA.

IV. PROPOSED PENALTY

64. In determining the amount of any penalty to be assessed, Section 16 of TSCA requires that Complainant consider the nature, circumstances, extent and gravity of the violations and, with respect to Respondent, its ability to pay, the effect of the proposed penalty on the ability to continue to do business, any history of prior such violations, the degree of culpability, and such other matters as justice may require.

65. To assess a penalty for the alleged violations in this Complaint, Complainant will take into account the particular facts and circumstances of this case with specific reference to EPA's August 2010 Interim Final Policy entitled, "Consolidated Enforcement Response and Penalty Policy for the Pre-Renovation Education Rule; Renovation, Repair and Painting Rule; and Lead-Based Paint Activities Rule" (the "LBP Consolidated ERPP"), a copy of which is enclosed with this Complaint. The LBP Consolidated ERPP provides a rational, consistent, and equitable calculation methodology for applying the statutory penalty factors enumerated above to particular cases.

66. **Ability to Pay**: Any proposed penalty in this matter will be developed based upon the best information available to Complainant. However, any such penalty may also be adjusted if Respondent is able to establish a bona fide claim of its ability to pay a penalty by providing Complainant with adequate financial documentation of its claim.

67. By this Complaint, Complainant seeks to assess civil penalties against Respondent of up to \$37,500 per day per violation for the seven violations of the RRP Rule alleged herein, as discussed further below:

Count 1 (Failure to Obtain Firm Certification): One violation for Respondent's failure to apply for and obtain initial firm certification to perform renovations from EPA by no later than September 30, 2010. The RRP Rule requirements are designed to limit exposure to lead during renovations and the certification requirement is important to ensure that firms are protecting children and other residents while renovations are ongoing. The failure of a firm to obtain certification to perform renovations results in a medium probability that unqualified firms will improperly perform renovations, increasing the risk that exposures to lead will be inadequately controlled during renovations. In addition, children under the age of six are most likely to be adversely affected by the presence of lead-based paint and lead-based paint hazards, because of how they play and ingest materials from their environment, and because of their vulnerability due to their physical development. Thus, the presence of a child under six years old in one of the apartments at the Facility means that Respondent's failure to obtain firm certification had the potential for serious damage to human health.

Count 2 (Failure to Post Warning Signs): One violation for Respondent's failure to post and maintain warning signs in the work area of the repainting project at the Facility. The RRP Rule requirements are designed to limit exposure to lead during renovations and the work practice requirements are important to ensure that firms are protecting children and other residents while renovations are ongoing. The failure to post and maintain warning signs in the work area results in a high probability that residents

and other persons will be inadequately warned about the potential for exposure to lead during renovations. In addition, children under the age of six are most likely to be adversely affected by the presence of lead-based paint and lead-based paint hazards, because of how they play and ingest materials from their environment, and because of their vulnerability due to their physical development. Thus, the presence of a child under six years old in one of the apartments at the Facility means that Respondent's failure to post and maintain warning signs had the potential for serious damage to human health.

Count 3 (Failure to Cover Ground): One violation for Respondent's failure to cover the ground in the work area of the repainting project at the Facility with plastic sheeting or other disposable impermeable material in order to collect paint debris. The RRP Rule requirements are designed to limit exposure to lead during renovations and the work practice requirements are important to ensure that firms are protecting children and other residents while renovations are ongoing. The failure to cover the ground in the work area creates a high probability that the soil surrounding the work area could become contaminated with lead and that children could also subsequently become exposed to lead by playing in or ingesting the contaminated soil. In addition, children under the age of six are most likely to be adversely affected by the presence of lead-based paint and lead-based paint hazards, because of how they play and ingest materials from their environment, and because of their vulnerability due to their physical development. Thus, the presence of a child under six years old in one of the apartments at the Facility means that Respondent's failure to cover the ground in the work area of the repainting project at the Facility with plastic sheeting or other disposable impermeable material had the potential for serious damage to human health.

Count 4 (Use of Sanding/Grinding Equipment without HEPA Exhaust Control):

One violation for Respondent's use of sanding/grinding equipment without HEPA exhaust control. The RRP Rule requirements are designed to limit exposure to lead during renovations and the work practice requirements are important to ensure that firms are protecting children and other residents while renovations are ongoing. The use of sanding/grinding equipment without HEPA exhaust control creates a high probability that lead dust will be inadequately controlled during renovations, resulting in an increased risk of exposure to lead. In addition, children under the age of six are most likely to be adversely affected by the presence of lead-based paint and lead-based paint hazards, because of how they play and ingest materials from their environment, and because of their vulnerability due to their physical development. Thus, the presence of a child under six years old in one of the apartments at the Facility means that Respondent's use of sanding/grinding equipment without HEPA exhaust control had the potential for serious damage to human health.

Count 5 (Failure to Contain Waste): One violation for Respondent's failure to contain waste from renovation activities. The RRP Rule requirements are designed to limit exposure to lead during renovations and the work practice requirements are important to ensure that firms are protecting children and other residents while renovations are ongoing. The failure to contain waste from renovation activities results in a high probability that contaminated lead waste will be inadequately controlled during renovations. In addition, children under the age of six are most likely to be adversely affected by the presence of lead-based paint and lead-based paint hazards, because of how they play and ingest materials from their environment, and because of their

vulnerability due to their physical development. Thus, the presence of a child under six years old in one of the apartments at the Facility means that Respondent's failure to contain waste from renovation activities had the potential for serious damage to human health.

Count 6 (Failure to Establish and Maintain Records): One violation for Respondent's failure to establish and maintain records necessary to demonstrate compliance with the RRP Rule. The RRP Rule requirements are designed to limit exposure to lead during renovations and the recordkeeping requirements are important to ensure that EPA can monitor compliance with the RRP Rule. The failure to establish and maintain records necessary to demonstrate compliance with the RRP Rule creates a medium probability that EPA will be unable to monitor such compliance by a firm. In addition, children under the age of six are most likely to be adversely affected by the presence of lead-based paint and lead-based paint hazards, because of how they play and ingest materials from their environment, and because of their vulnerability due to their physical development. Thus, the presence of a child under six years old in one of the apartments at the Facility means that Respondent's failure to establish and maintain records necessary to demonstrate compliance with the RRP Rule had the potential for serious damage to human health.

V. NOTICE OF OPPORTUNITY TO REQUEST A HEARING

67. As provided by Section 16(a)(2)(A) of TSCA, 15 U.S.C. § 2615(a)(2)(A), and in accordance with 40 C.F.R. § 22.14, Respondent has a right to request a hearing on any material fact alleged in this Complaint. Any such hearing would be conducted in accordance with EPA's Consolidated Rules of Practice, 40 C.F.R. Part 22, a copy of

which is enclosed with this Complaint. Any request for a hearing must be included in Respondent's written Answer to this Complaint ("Answer") and filed with the Regional Hearing Clerk at the address listed below within thirty (30) days of receipt of this Complaint.

68. The Answer shall clearly and directly admit, deny, or explain each of the factual allegations contained in the Complaint. Where Respondent has no knowledge as to a particular factual allegation and so states, the allegation is deemed denied. The failure of Respondent to deny an allegation contained in the Complaint constitutes an admission of that allegation. The Answer must also state the circumstances or arguments alleged to constitute the grounds of any defense; the facts that Respondent disputes; the basis for opposing any proposed penalty; and whether a hearing is requested. See 40 C.F.R. § 22.15 of the Consolidated Rules of Practice for the required contents of an Answer.

69. Respondent shall send the original and one copy of the Answer, as well as a copy of all other documents that Respondent files in this action, to the Regional Hearing Clerk at the following address:

Wanda A. Santiago
Regional Hearing Clerk
U.S. EPA, Region 1
5 Post Office Square – Suite 100
Mail Code: ORA18-1
Boston, Massachusetts 02109-3912

70. Respondent shall also serve a copy of the Answer, as well as a copy of all other documents that Respondent files in this action, to William D. Chin, the attorney assigned to represent Complainant in this matter, and the person who is designated to receive service in this matter under 40 C.F.R. § 22.5(c)(4), at the following address:

William D. Chin
Enforcement Counsel
U.S. EPA, Region 1
5 Post Office Square – Suite 100
Mail Code: OES04-4
Boston, Massachusetts 02109-3912

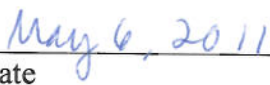
71. If Respondent fails to file a timely Answer to the Complaint, Respondent may be found to be in default, pursuant to 40 C.F.R. § 22.17 of the Consolidated Rules of Practice. For purposes of this action only, default by Respondent constitutes an admission of all facts alleged in the Complaint and a waiver of Respondent's right to contest such factual allegations under Section 16(a)(2)(A) of TSCA. Pursuant to 40 C.F.R. § 22.17(d), the penalty assessed in the default order shall become due and payable by Respondent, without further proceedings, thirty (30) days after the default order becomes final.

VI. SETTLEMENT CONFERENCE

72. Whether or not a hearing is requested upon filing an Answer, Respondent may confer informally with Complainant or his designee concerning the violations alleged in this Complaint. Such conference provides Respondent with an opportunity to respond informally to the allegations, and to provide whatever additional information may be relevant to the disposition of this matter. To explore the possibility of settlement, Respondent or Respondent's counsel should contact William D. Chin, Enforcement Counsel, at the address cited above or by calling 617-918-1728. Please note that a request for an informal settlement conference by Respondent does not automatically extend the 30-day time period within which a written Answer must be submitted in order to avoid becoming subject to default.



Joanna Jerison
Legal Enforcement Manager
Office of Environmental Stewardship
U.S. EPA, Region 1



Date



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 1
5 POST OFFICE SQUARE, SUITE 100
BOSTON, MA 02109-3912

May 10, 2011

Via Hand Delivery

Wanda I. Santiago
Regional Hearing Clerk
U.S. EPA, Region 1
5 Post Office Square – Suite 100
Mail Code: ORA18-1
Boston, MA 02109-3912

RE: *In the Matter of: Colin Wentworth*
Docket No. TSCA-01-2011-0037

Dear Ms. Santiago:

I enclose for filing in the above-referenced matter the original and one copy of the Complaint and a Certificate of Service.

Thank you for your assistance.

Sincerely,

A handwritten signature in cursive script that reads "William D. Chin".

William D. Chin
Enforcement Counsel
U.S. EPA, Region 1

Enclosures

cc: Colin Wentworth

In the Matter of: Colin Wentworth

Docket No. TSCA-01-2011-0037

CERTIFICATE OF SERVICE

I hereby certify that I caused the foregoing Complaint to be sent to the following person(s), in the manner stated, on the date below:

Original and one copy,
By Hand Delivery:

Wanda I. Santiago
Regional Hearing Clerk
U.S. EPA, Region 1
5 Post Office Square – Suite 100
Mail Code: ORA18-1
Boston, MA 02109-3912

One copy, By Certified Mail,
Return Receipt Requested:

Colin Wenworth
6 Lake Avenue
Rockland, ME 04841

Dated: _____

5/10/11



William D. Chin
Enforcement Counsel
U.S. EPA, Region 1
5 Post Office Square – Suite 100
Mail Code: OES04-1
Boston, MA 02109-3912